

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described at 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). (This is a GIL).

September 9, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 20, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are a not-for-profit 501(c)(3) handicapped workshop in CITY, Illinois. We are requesting an exemption from Illinois State Sales Tax for food items sold at a state owned mental health hospital. COMPANY has been requested by a state owned mental health hospital to operate a food service at their facility. This food service would sell hamburgers, hot dogs, etc. **exclusively** to staff and patients of the hospital over the lunch hour. All proceeds from the sale of these items would be used for the operation of our handicapped workshop. Due to the nature of this operation and the fact that it is at a state owned facility we feel that this exemption is merited.

To aid in this matter I have enclosed copies of our:

- IRS 501(c)(3) determination letter
- Illinois Department of Revenue exemption certificate
- By- Laws
- Articles of Incorporation
- Most recent audited financials

If you need any further information you may contact me. I look forward to your prompt response in this matter.

In general, the Illinois Retailers' Occupation Tax (sales tax) is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. See 86 Ill. Adm. Code 130.101.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations could use their E numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

Your letter did not go into detail regarding how the food service will operate. Please note that the sales tax obligations will differ depending upon who does the selling. If an exclusively charitable organization that holds an "E" number makes sales exclusively to its members for purposes of the organization, the sales can be made tax free. If an exempt hospital operates a food service open only to patients, visitors, hospital employees, doctors attending to patients in the hospital, and volunteer hospital workers, sales may be made tax free. See 86 Ill. Adm. Code 130.2005(a)(2)(A). However, if the food service is also open to the public, the sales may not be made tax free.

On the other hand, if an exclusively charitable organization that has an "E" number operates a food service in an exempt hospital, sales may not be made tax free. This is because the sales are not being made to the members of the exclusively charitable organization, but rather, to hospital employees and others. In addition, the sales are not exempt by virtue of being made to an exempt entity (e.g. an exempt hospital), because the sales are made to individuals, not to the hospital entity itself.

Sales of food for immediate consumption are subject to the State's 6.25% sales tax rate. Local sales taxes may also apply, depending upon where retail sales are made. The total rate for any location in Illinois is listed in the Sales Tax Rate Reference Manual. This publication is available for viewing or downloading on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.